

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Richard Rynn,

10 Plaintiff,

11 v.

12 Gregory A. McKay, *et al.*,

13 Defendants.
14

No. CV-18-00414-PHX-JJT

ORDER

15 At issue are three Motions to Dismiss (Docs. 61, 62, 64) filed by the remaining
16 Defendants in this matter, as well as a Motion for Summary Adjudication (Doc. 70). The
17 Court resolves the Motions without oral argument. *See* LRCiv 7.2(f).

18 The Court previously entered an Order (Doc. 59) dismissing all of the claims in
19 Plaintiff's Complaint but granting Plaintiff leave to amend certain claims. Plaintiff then
20 filed a First Amended Complaint (Doc. 60, FAC), which all remaining Defendants now
21 seek to dismiss (Docs. 61, 62, 64).

22 Plaintiff requested an extension of time (Doc. 67) to respond to the Motion to
23 Dismiss filed by EMPACT Suicide Prevention Center (Doc. 61), which the Court granted
24 (Doc. 68), and Plaintiff then filed a Response (Doc. 69) to EMPACT's Motion to
25 Dismiss. Because the Court will grant EMPACT's Motion, it did not await a Reply.

26 Plaintiff did not timely file a Response to the Motions to Dismiss filed by the State
27 Defendants (Doc. 62) or the Quail Run Defendants (Doc. 64), and the Court will
28 therefore grant those Motions both under LRCiv 7.2(i) and because Plaintiff failed to cure

1 the defects identified in the Court's prior Order. The Court will therefore dismiss the
2 claims against the State Defendants and the Quail Run Defendants with prejudice and
3 grant the Quail Run Defendants' Motion for Summary Adjudication (Doc. 70).

4 With regard to Plaintiff's remaining claims against EMPACT, the Court found in
5 its prior Order (Doc. 59) that Plaintiff's claims in the Complaint failed because, among
6 other reasons, (1) Plaintiff did not make any allegation as to an action taken by EMPACT
7 that would give rise to a claim, plainly failing to meet the pleading requirements of
8 Federal Rule of Civil Procedure 8; and (2) Plaintiff did not allege any facts to show that
9 EMPACT is a state actor, as required to sustain a claim under 42 U.S.C. § 1983 against it.

10 In the FAC, Plaintiff has done nothing to cure these defects. As in the original
11 Complaint, the sole allegation even implicating EMPACT is that one of its employees
12 "asked to keep M.R. for three more days." (FAC ¶ 16.) As the Court stated in its prior
13 Order, this is wholly insufficient to support Plaintiff's claims, and, considering Plaintiff
14 did not even begin to cure the defects in his claims when given the opportunity, the Court
15 will now dismiss those claims with prejudice.

16 The Court also notes that Plaintiff did not state a federal claim in the Complaint
17 and again failed to state a § 1983 claim against EMPACT in the FAC, and the Court finds
18 that Plaintiff cannot plausibly cure the defect in his § 1983 claim by amendment. Without
19 that federal question claim and considering that diversity jurisdiction is clearly lacking,
20 the Court also lacks subject matter jurisdiction over Plaintiff's state law claims. *See* 28
21 U.S.C. §§ 1331, 1332. The United States Supreme Court has stated that a federal court
22 must not disregard or evade the limits on its subject matter jurisdiction. *Owen Equip. &*
23 *Erections Co. v. Kroger*, 437 U.S. 365, 374 (1978). Thus, a federal court is obligated to
24 inquire into its subject matter jurisdiction in each case and to dismiss a case when subject
25 matter jurisdiction is lacking. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th
26 Cir. 2004); Fed. R. Civ. P. 12(h)(3). To proceed in federal court, a plaintiff must allege
27 enough in the complaint for the court to conclude it has subject matter jurisdiction. *See*
28 Fed. R. Civ. P. 8(a); Charles Alan Wright & Arthur R. Miller, 5 *Fed. Practice &*

1 *Procedure* § 1206 (3d ed. 2014). In the FAC, Plaintiff has failed to show that the Court
2 has subject matter jurisdiction over his claims, and the Court must dismiss Plaintiff's
3 claims for this additional reason.

4 **IT IS THEREFORE ORDERED** granting Defendant EMPACT-Suicide
5 Prevention Center, an Arizona Nonprofit Corporation's Motion to Dismiss (Doc. 61).

6 **IT IS FURTHER ORDERED** granting the State Defendants' Motion to Dismiss
7 (Doc. 62).

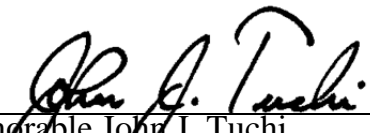
8 **IT IS FURTHER ORDERED** granting Defendants Quail Run Behavioral Health
9 and Candy Zammit, *et ux.*'s Motion to Dismiss (Doc. 64).

10 **IT IS FURTHER ORDERED** granting Defendants Quail Run Behavioral Health
11 and Candy Zammit, *et ux.*'s Motion for Adjudication of their Motion to Dismiss
12 (Doc.70).

13 **IT IS FURTHER ORDERED** that all of Plaintiff's claims in the First Amended
14 Complaint (Doc. 60) are dismissed with prejudice.

15 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
16 accordingly and close this case.

17 Dated this 6th day of November, 2018.

18
19 
20 Honorable John J. Tuchi
21 United States District Judge
22
23
24
25
26
27
28